

B3
C. 3/1/01
modifying the respective corresponding priority value of each of at least one of the activatable modules individually.

REMARKS

Claims 1 to 20 are now pending. The Applicants respectfully request reconsideration of the present application in view of the following remarks.

Claims 1, 3, 8, 9, 12, 14, 17 and 18 stand rejected under 35 U.S.C. § 102(a) as being anticipated by WO 97/13064 to Bergstrom et al. (the "Bergstrom reference"). It is respectfully submitted that the Bergstrom reference fails to anticipate claims 1, 3, 8, 9, 12, 14, 17 and 18 for at least the following reasons.

Twice amended claim 1 recites, inter alia, the following:

"A control device for controlling a system, comprising:

a plurality of activatable modules . . .

a priority manager continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually." (Emphasis added.)

The Examiner states that the Bergstrom reference discloses a plurality of activatable modules with corresponding priority values, a scheduler and a priority manager modifying the corresponding priority values of at least one of the modules. Therefore, the Examiner contends that the Bergstrom reference anticipates claims 1, 8 and 12.

To anticipate a claim under § 102, a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997).

The Examiner, in maintaining that the Bergstrom reference anticipates the subject matter of claims 1, 8 and 12, responds to the Applicants' remarks of the Response filed on January 23th, 2001, by stating that priority values of the Bergstrom reference do not remain fixed in the DF scheduler. The Examiner states that the Bergstrom reference describes the

running of routines based on any fault data signals time elapsed since the engine was started and the relative priority between the routines. The Examiner states that the final priority of the routines depend on more than the set initial priority.

Applicants once again emphasize the distinction between the Bergstrom reference and the subject matter of claims 1, 8 and 12. The DF scheduler of the Bergstrom reference initially receives requests to run evaluation routines and then decides in which order these evaluation routines shall be performed. (Bergstrom reference, p. 14, ll. 18-21). As the Examiner states the DF scheduler of the Bergstrom reference takes into account evaluated "fault" data signals, time elapsed and the relative priority between the evaluation routines. The DF scheduler of the Bergstrom reference retrieves these information from a scheduler table, where the scheduler table specifies the priority level associated with the evaluation routines including fault signals. (Bergstrom reference, p. 15, ll. 3-18). The priority level retrieved from the scheduler table is not modified by the DF Scheduler once retrieved by the DF scheduler. The Bergstrom clearly states that the scheduler table specifies the priority level of all evaluation routines dedicated to certain specified priority groups so that the DF scheduler module can determine which of the requested routines has priority within each priority group. (Bergstrom reference, p. 15, ll. 6-15). The DF scheduler is not described as modifying these priority values specified in the scheduler table. The DF scheduler merely retrieves these priority values from the scheduler table based upon the requests it receives. The DF scheduler of the Bergstrom reference takes into account any latest evaluated data and merely decides whether this evaluated data implies that certain evaluation routines should be inhibited. The DF scheduler is not described as retrieving the latest evaluated data and then changing any priority values associated with the evaluation routines.

As recited above in twice amended claims 1, 8 and 12, the priority manager of the present invention is "continuously modifying the respective corresponding priority value of each of the activatable modules individually." The DF scheduler of Bergstrom reference merely retrieves priority values from a scheduler table which specifies these set values. The DF scheduler uses the evaluated data to determine which evaluation routine to inhibit, it does not change or modify the priority value set for the evaluation routine.

Accordingly, it is submitted that the Bergstrom reference does not disclose every feature recited in claims 1, 8 and 12, and therefore the Bergstrom reference does not

anticipate claims 1, 8 and 12. Claim 3 depends from claim 1; claim 9 depends from claim 8; and claims 14, 17 and 18 depend from claim 12. Therefore, the Bergstrom reference does not anticipate claims 3, 8, 9, 14, 17 and 18 for at least the same reasons as stated in regard to claims 1, 8 and 12. Accordingly, claims 1, 3, 8, 9, 12, 14, 17 and 18 stand allowable, and withdrawal of the rejection under 35 U.S.C. § 102(a) is requested.

Claims 2, 4, 13 and 15 stand rejected under 35 U.S.C. § 103 as being obvious over the Bergstrom reference in view of U.S. Patent No. 4,787,041 to Yount (the "Yount reference"). For a claim to be rejected for obviousness under 35 U.S.C. § 103, the prior art must teach or suggest each element of the claim, and it must also suggest combining the elements in the manner contemplated by the claim. See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296; and In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990).

Claims 2 and 4 depend from claim 1. Claims 13 and 15 depend from claim 12. Accordingly, the arguments presented above in connection with claims 1 and 12 and the Bergstrom reference apply equally to claims 2, 4, 13 and 15. The Yount reference does not cure the deficiencies of the Bergstrom reference. Although the Yount reference suggests that an access problem is solved by a waiting period, there is no suggestion that priority values of modules are changed. Thus, for at least the same reasons as presented above, the Bergstrom reference and the Yount reference, either individually or in combination, fail to render claims 2, 4, 13 and 15 obvious. Withdrawal of the rejection of claims 2, 4, 13 and 15 under 35 U.S.C. § 103 is therefore requested.

Claims 5, 6, 10, 11, 19 and 20 stand rejected under 35 U.S.C. § 103 as being obvious over the Bergstrom reference in view of U.S. Patent No. 4,653,003 to Kirstein (the "Kirstein reference"). Claims 5 and 6 depend from claim 1. Claims 10 and 11 depend from claim 8. Claims 19 and 20 depend from claim 12. Accordingly, the arguments presented above in connection with claims 1, 8 and 12 and the Bergstrom reference apply equally to claims 5, 6, 10, 11, 19 and 20. The Kirstein reference does not cure the deficiencies of the Bergstrom reference. The Kirstein reference simply does not address changing of priority values of modules. Thus, for at least the same reasons as presented above, the Bergstrom reference and the Kirstein reference, either individually or in combination, fail to render claims 5, 6, 10, 11, 19 and 20 obvious. Withdrawal of the rejection of Claims 5, 6, 10, 11, 19 and 20 under 35

U.S.C. § 103 is therefore requested.

Claims 7 and 16 stand rejected under 35 U.S.C. § 103 as being obvious over the Bergstrom reference in view of U.S. Patent No. 5,563,452 to Kephart (the "Kephart reference"). Claims 7 and 16 depend from claims 1 and 12, respectively. Accordingly, the arguments presented above in connection with claims 1 and 12 and the Bergstrom reference apply equally to claims 7 and 16. The Kephart reference does not cure the deficiencies of the Bergstrom reference. Although, the Kephart reference discloses a radio module being activated depending on a preselected time, there is no suggestion regarding the changing of priority values. Thus, for at least the same reasons as presented above, the Bergstrom reference and the Kephart reference, either individually or in combination, fail to render claims 7 and 16 obvious. Withdrawal of the rejection of claims 7 and 16 under 35 U.S.C. § 103 is therefore requested.

CONCLUSION

In light of the foregoing, the Applicants respectfully submit that all of the pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon Deposit Account No. 11-0600.

Respectfully submitted,
KENYON & KENYON

Dated: May 30, 2001

By: for Richard L. Mayer (by File)
Richard L. Mayer
Reg. No. 22,490
One Broadway
New York, NY 10004
(212) 425-7200
Pg. No. 21, 197)

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

1. (Twice Amended) A control device for controlling a system, comprising:
 - a plurality of activatable modules, each of the activatable modules having a respective corresponding priority value;
 - a scheduler activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules, the activated modules generating data by analyzing states of the system; and
 - a priority manager continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually.

8. (Twice Amended) A control device for controlling a system, comprising:
 - a plurality of activatable modules, each of the activatable modules having a respective corresponding priority value;
 - a scheduler activating the activatable modules as a function of the corresponding priority value of each of the activatable modules to provide activated modules, the activated modules generating data by analyzing states of the system; and
 - a priority manager continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually;
 - wherein the scheduler selects a first module having a highest priority for an activation, the first module being selected from a set of the activatable modules awaiting the activation,
 - wherein the scheduler assembles a residual set of the activatable modules from the set of the activatable modules, the residual set excluding the first module and excluding second modules, the second modules being those of the activatable modules which must not be activated simultaneously with the first module, and
 - wherein the scheduler selects third modules from the residual set of the activatable modules for the activation.

assigning a respective corresponding priority value to each of the activatable modules;

activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules;

with the activated modules, generating data by observing states of the system; and

continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually.

12. (Twice Amended) A method for operating a control device which controls a system, the control device including a plurality of activatable modules, the method comprising the steps of:

assigning a respective corresponding priority value to each of the activatable modules;
activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules;
with the activated modules, generating data by observing states of the system; and
continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually.